

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* PETER D.  
GRUBEA,

Plaintiff,

v.

ROSICKI, ROSICKI & ASSOCIATES, P.C., *et al.*,

Defendants.

12 Civ. 7199 (JSR)

**NOTICE OF THE GOVERNMENT’S OPPOSITION TO DISMISSAL OF CERTAIN  
CLAIMS OF RELATOR ON THE BASIS OF THE PUBLIC DISCLOSURE BAR**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(e)(4)(A), the United States hereby exercises its right to object to dismissal of the relator Peter Grubea’s Third Amended Complaint on the basis of the public disclosure bar for those claims accruing on or after March 23, 2010.<sup>1</sup>

The False Claims Act states in pertinent part:

The court shall dismiss an action or claim under this section, *unless opposed by the Government*, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—(1) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

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<sup>1</sup> The public disclosure bar of the False Claims Act was amended on March 23, 2010. In *Graham County Soil and Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 283 n.1 (2010), the Supreme Court held that the amendment was not retroactive, and the Government thus takes the position that its opposition only serves as an automatic bar to motions to dismiss concerning claims submitted on or after the date of the amendment. The Government nevertheless opposes the motions to dismiss the claims that precede March 23, 2010 submitted by several of the defendants (*see* Dkt Nos. 124, 136, 138), for the reasons set forth in the Government’s memorandum of law opposing the motion to dismiss of defendants Rosicki, Rosicki & Associates, Enterprise Process Service, Inc., and Paramount Land, Inc.

31 U.S.C. § 3730(e)(4)(A)(2010) (emphasis added). Pursuant to the statute, if the United States objects to a motion to dismiss on the ground of public disclosure, the motion cannot be granted. *See, e.g., U.S. ex rel. May v. Purdue Pharma L.P.*, 737 F.3d 908, 917 (4th Cir. 2013); *U.S. ex rel. Griffith v. Conn.*, 117 F. Supp. 3d 961, 967 fn. 1 (E.D. Ky. 2015).

In submitting the instant notice, the United States objects to the dismissal pursuant to the public disclosure bar of the relator's claims that accrued on or after March 23, 2010, and therefore, the defendants' motions to dismiss on this ground should be denied.

Dated: May 7, 2018

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